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Kyle Brown

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EXAMINER

PAULA, CESAR B

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KYLE BROWN, FRANCIS DINARDO, JULIE STRONG,
ROBERT THIMSEN and SKYLER THOMAS

Appeal 2007-3625
Application 10/041,057
Technology Center 2100

Decided: March 18, 2008

Before JAMES D. THOMAS, ST. JOHN COURTENAY III
and THU A. DANG, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1 through 26. We have jurisdiction under 35 U.S.C. §§ 6(b) and 134(a).

As best representative of the disclosed and claimed invention, independent claim 6 is reproduced below:

6. A method for manipulating files comprising the steps of:

identifying a file having a first section marked with a first identifier, said first identifier comprising an opening tag having a unique indicator corresponding to said first section;

receiving an indicator; and

filtering said file to modify said first section marked with said first identifier based on said indicator.

The following references are relied on by the Examiner:

Lakritz	US 2003/0140316 A1	Jul. 24, 2003 (effective filing date Jan. 28, 1999)
Eerola	US 6,678,518 B2	Jan. 13, 2004 (filing date Dec. 9, 1999)

Claims 1, 4 through 12, 14 through 18, 20 through 22, 24, and 25 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Lakritz. This reference is utilized alone within 35 U.S.C. § 103 to reject claim 13. Additionally, Lakritz is combined with Eerola within 35 U.S.C. § 103 as to claims 2, 3, 19, 23, and 26.

Rather than repeat the positions of the Appellants and the Examiner, reference is made to the Brief (no Reply Brief has been filed) for the Appellants' positions, and to the Answer for the Examiner's positions.

OPINION

Generally, for the reasons set forth by the Examiner in the Answer, we sustain each of the respective rejections of the claims on appeal. We add the following for emphasis.

The language common to independent claims 1, 6, 18, 22, and 26 on appeal that is the basis of the dispute between the Examiner is “said first identifier comprising an opening tag having a unique indicator corresponding to said first section.” Although independent claims 1, 18, 22, and 26 go on to recite removing and substituting functionalities as argued at pages 7 and 8 of the Brief, independent claim 6 does not require such a detailed recitation of removing and substituting but merely a broadly defined “filtering” feature. Contrary to the assertions made at this portion of the Brief, no text per se is recited in any of these independent claims and there is merely a reference to a language indicator in independent claim 1, 18, 22, and 16, a feature which is recited only broadly as a mere indicator in independent claim 6. Appellants’ basic position appears to be bottomed on use of the word “unique.” This word is subject to many interpretations and there’s no indication in the claim that it is “unique” with respect to anything. Even recognizing as Appellants do at the bottom of page 7 of the Brief that the identifiers in Lakritz are always the same, the claim does not necessarily further distinguish by the use of the word “unique” over identifiers that may be the same.

Equally compelling of our conclusion of anticipation of independent claims 1, 6, 18, and 22 are the arguments made by the Examiner at page 11 of the Answer which we reproduce here:

The Appellant notes that the “Wreplace” commands of Lakritz are not unique as the unique indicator corresponding to the first section recited in the claims (pages 7-8). The Examiner disagrees, because Lakritz teaches the use of beginning, and ending tags --<!-- WReplaceBegin -->, and --<!-- WReplaceEnd -->(0560-0570) – to translate text in an HTML document. As it is shown, the begin tag has a unique word or indicator – “WReplaceBegin”– associated or corresponding to the section marked by the tag –*first section*. The –”WReplaceBegin” word is part of a special custom tag designated to translate words in an HTML document.

Since Appellants have not filed a Reply Brief, they do not contest this assessment of the Examiner as to the teachings of Lakritz pertinent to the disputed claimed feature. Therefore, on the basis of the weight of the arguments and evidence before us, we find no error persuasively set forth by Appellants in the Brief as to the Examiner’s positions as to the first stated rejection of the earlier-identified claims under 35 U.S.C. § 102. No claims other than the independent claims 1, 6, 18, and 22 within this rejection have been argued before us.

Correspondingly, no arguments has been presented to us as to the features of dependent claim 13 argued to have been obvious to the artisan within 35 U.S.C. § 103 over Lakritz alone. The third stated rejection of dependent claims 2, 3, 19, 23, and independent claim 26 relying upon Lakritz and Eerola within 35 U.S.C. § 103 has also not been contested. Appellants’ position at the bottom page 8 of the Brief does not argue that these references are not properly combinable within 35 U.S.C. § 103 and does not contest what the Examiner said is taught in Eerola. In effect, Appellants present the same arguments as to the claims in the third stated

rejection as were present in the first stated rejection under 35 U.S.C. § 102 over Lakritz.

In view of the foregoing, the decision of the Examiner rejecting various claims on appeal under 35 U.S.C. § 102 and 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. §1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

pgc

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